Chapter 87

HISTORIC PRESERVATION

§ 87-1.	Purpose.	§ 87-6.	Certificate of appropriateness application procedure.
§ 87-2.	Historic Preservation Commission.	§ 87-7.	Hardship criteria for demolition.
§ 87-3.	Designation of landmarks or historic districts.	§ 87-8.	Hardship criteria for alteration.
§ 87-4.	Certificate of appropriateness for alteration, demolition or new construction.	§ 87-9.	Hardship application procedure.
§ 87-5.	Criteria for approval of certificate of appropriateness.	§ 87-10.	Enforcement.
		§ 87-11.	Maintenance and repair required.
		§ 87-12.	Penalties for offenses.
		§ 87-13.	Appeals.

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[HISTORY: Adopted by the Town Board of the Town of Elma 7-17-2013 by L.L. No. 2-2013. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Zoning — See Ch. 144.

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§ 87-1. Purpose.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts are necessary to promote the economic, cultural, educational, and general welfare of the public. Inasmuch as the identity of a people is founded on its past and inasmuch as Elma has many significant historic, architectural and cultural resources, which constitute its heritage, this chapter is intended to:

A. Protect and enhance the landmarks and historic districts, which represent distinctive elements of Elma's historic, architectural, and cultural heritage;

B. Foster civic pride in the accomplishments of the past;

C. Protect and enhance Elma's attractiveness to visitors and the support and stimulus to the economy thereby provided; and

D. Insure the harmonious, orderly, and efficient growth and development of the Town.

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§ 87-2. Historic Preservation Commission. [Amended 12-7-2016 by L.L. No. 5-2016]

There is hereby created a commission to be known as the "Elma Historic Preservation Commission."

A. The Commission shall consist of seven members to be appointed, to the extent available in the community, by the Supervisor as follows:

(1) At least one shall be an architect experienced in working with historic buildings;

(2) At least one shall be a historian;

(3) At least one shall be a resident of an historic district;

(4) At least one shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment or volunteer activity in the field of historic preservation, or other serious interest in the field; and

(5) All members shall have a known interest in historic preservation and architectural development within the Town of Elma.

B. Commission members shall serve for a term of seven years, with the exception of the initial term of one of the seven members, which shall be one year, one, which shall be two years, and one, which shall be three years.

C. The Chairman of the Commission shall be appointed by the Town Supervisor and approved by the Town Board in the organization agenda.

D. The powers of the Commission shall include:

(1) Employing staff and professional consultants as necessary to carry out the duties of the Commission;

(2) Promulgating rules and regulations as necessary to carry out the duties of the Commission;

(3) Adopting criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;

(4) Conducting surveys of significant historic, architectural, and cultural landmarks and historic districts within the Town;

(5) Designating identified structures or resources as landmarks and historic districts;

(6) Accepting on behalf of the Town government the donation of facade easements and development rights and the making of recommendations to the Town government concerning the acquisition of facade easements or other interests in real property as necessary to carry out the purposes of this act;

(7) Increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs;

(8) Making recommendations to Town government concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the Town;

(9) Recommending acquisition of a landmark structure by the Town government where its preservation is essential to the purposes of this act and where private preservation is not feasible; and

(10) Approving or disapproving of applications for certificates of appropriateness pursuant to this chapter.

E. The Commission shall meet at least monthly, but meetings may be held at any time on the written request of any two of the Commission members or on the call of the Chairman, the Town Supervisor or the Town Board.

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F. A quorum for the transaction of business shall consist of four of the Commission's members; not less than four of the full-authorized membership may grant or deny a certificate of appropriateness.

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§ 87-3. Designation of landmarks or historic districts.

A. The Commission may designate an individual property as a landmark if it:

(1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation; or

(2) Is identified with historic personages; or

(3) Embodies the distinguishing characteristics of an architectural style; or

(4) Is the work of a designer whose work has significantly influenced an age; or

(5) Because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.

B. The Commission may designate a group of properties as an historic district if it: 1) contains properties which meet one or more of the criteria for designation of a landmark; and 2) by reason of possessing such qualities, it constitutes a distinct section of the Town. The boundaries of each historic district designated henceforth shall be specified in detail and shall be filed, in writing, in the Town Clerk's office for public inspection.

C. Notice of a proposed designation shall be sent by registered mail to the owner of the property proposed for designation, describing the property and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general circulation at least 30 days prior to the date of the public hearing. Once the Commission has issued notice of a proposed designation, no building permits shall be issued by the Building Inspector until the Commission has made its decision.

D. The Commission shall hold a public hearing prior to designation of any landmark or historic district. The Commission, owners and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.

E. The Commission shall forward notice of each property designated as a landmark and the boundaries of each designated historic district to the office of the Erie County Clerk for recordation.

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§ 87-4. Certificate of appropriateness for alteration, demolition or new construction.

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property within an historic district, nor shall any person make any material change in the appearance of such property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Commission.

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§ 87-5. Criteria for approval of certificate of appropriateness.

A. In passing upon an application for a certificate of appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless they are open to the public. The Commission's decision shall be based on the following principles:

(1) Properties which contribute to the character of the historic district shall be retained, with their historic features altered as little as possible;

(2) Any alteration of existing properties shall be compatible with their historic character, as well as with the surrounding district; and

(3) New construction shall be compatible with the district in which it is located.

B. In applying the principle of compatibility, the Commission shall consider the following factors:

(1) The general design, character and appropriateness to the property of the proposed alteration or new construction;

(2) The scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;

(3) Texture, materials, and color and their relation to similar features of other properties in the neighborhood;

(4) Visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on streets, including setback; and

(5) The importance of historic, architectural or other features to the significance of the property.

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§ 87-6. Certificate of appropriateness application procedure.

A. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Historic Preservation Commission. The application shall contain:

(1) Name, address and telephone number of applicant;

(2) Location and photographs of property;

(3) Elevation drawings of proposed changes, if available;

(4) Perspective drawings, including relationship to adjacent properties, if available;

(5) Samples of color or materials to be used;

(6) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and

(7) Any other information which the Commission may deem necessary in order to visualize the proposed work.

B. No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Historic Preservation Commission. The certificate of appropriateness required by this chapter shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the Town of Elma. Before acting on or forwarding to the appropriate board any application for a variance, special use permit, site plan, building permit, demolition permit, sign permit or subdivision, the Building Inspector shall first consult a current list of all properties designated as individual landmarks or as contained within historic districts to determine the requesting property's status.

C. The Commission shall approve, deny or approve the permit with modifications within 90 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views.

D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's office for public inspection. The Commission's decision shall state the reasons for denying or modifying any application.

E. Certificates of appropriateness shall be valid for 12 months, after which the owner must reapply if he still wishes to undertake work on the property.

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§ 87-7. Hardship criteria for demolition.

An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

A. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

B. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and

C. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

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§ 87-8. Hardship criteria for alteration.

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

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§ 87-9. Hardship application procedure.

A. After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists.

B. The Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.

C. The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Commission shall approve only such work as is necessary to alleviate the hardship.

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§ 87-10. Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the Building Code Enforcement Officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Historic Preservation Commission, the Building Code Enforcement Officer shall issue a stop-work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.

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§ 87-11. Maintenance and repair required.

A. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within an historic district which does not involve a change in design, material, color or outward appearance.

B. No owner or person with an interest in real property designated as a landmark or included within an historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Preservation Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.

C. Examples of such deterioration include:

(1) Deterioration of exterior walls or other vertical supports.

(2) Deterioration of roofs or other horizontal members.

(3) Deterioration of exterior chimneys.

(4) Deterioration or crumbling of exterior stucco or mortar.

(5) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.

(6) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition, is necessary for the public safety.

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§ 87-12. Penalties for offenses. [Amended 12-7-2016 by L.L. No. 5-2016]

A. Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be liable to a fine of not less than $10 nor more than $3,000 for each day the violation continues.

B. Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this chapter shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Town Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

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§ 87-13. Appeals.

Any person aggrieved by a decision of the Historic Preservation Commission relating to hardship or a certificate of appropriateness may, within 15 days of the decision, file a written application with the Town Board for review of the decision. Reviews shall be conducted based on the same record that was before the Commission and using the same criteria.

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